

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs February 13, 2007

STATE OF TENNESSEE v. TIMOTHY ORLANDO HALL

Direct Appeal from the Criminal Court for Sumner County
No. 904-2005 Jane Wheatcraft, Judge

No. M2006-01269-CCA-R3-CD - Filed September 17, 2007

The defendant, Timothy Orlando Hall, pled guilty to aggravated assault, a Class C felony and domestic assault, a Class A misdemeanor. He received a total effective sentence of four years on probation. Thereafter, the trial court revoked the defendant's probation on the basis that he had violated the terms and conditions of his probation. The defendant appeals the revocation of his probation, arguing that the trial court failed to exercise conscientious and intelligent judgment. Following our review of the record, the parties' briefs and the applicable law, we affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed

J.C. McLIN, J., delivered the opinion of the court, in which DAVID G. HAYES and JERRY L. SMITH, JJ., joined.

David A. Doyle (on appeal and at trial), District Public Defender and Robert T. Depew (at trial), Assistant Public Defender, Gallatin Tennessee, for the appellant, Timothy Orlando Hall.

Robert E. Cooper, Jr., Attorney General and Reporter; Brian Clay Johnson, Assistant Attorney General; Lawrence Ray Whitley, District Attorney General; and Bryna Landers Grant and William G. Lamberth, III, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

FACTS AND PROCEDURAL HISTORY

On or about December 8, 2005, the defendant, Timothy Orlando Hall, was indicted in Sumner County for one count of domestic assault and one count of aggravated assault. On April 13, 2006, the defendant pled guilty to both charges. He received a four-year sentence on the aggravated assault conviction, and 11 months and 29 days in the county jail for his domestic assault conviction. The defendant's sentences were suspended to time served and he was placed on four years probation. On April 20, 2006, a violation of probation warrant was issued for the defendant alleging that he left

Sumner County and went to Savannah, Tennessee without permission and tested positive for cocaine.

The trial court held a probation revocation hearing on May 15, 2006. The following evidence was presented at the hearing: Ashley Cripps, the defendant's probation and parole officer, testified that the defendant was assigned to her on April 13th and that she explained the terms of probation to him at that time. She further testified that the defendant agreed to the terms of probation, which included a discussion about maintaining a drug-free lifestyle. Officer Cripps could not recall if she went over everything with the defendant immediately after he entered his guilty pleas, but she did recall that she told the defendant he would have to let her know if he left his current residence. The defendant told Officer Cripps he had been living with his wife but he could no longer live with her because of marital problems, so he gave Officer Cripps his father-in-law's address. Officer Cripps told the defendant that, "he could not leave," and he was instructed to call her because "there were things they had to do." She testified that from her perspective, the defendant seemed to understand the terms of his probation. When questioned by the court at the revocation hearing, Officer Cripps testified that she did not specify to the defendant on April 13, 2006, whether he was not to leave the county or the state, but stated that she told him simply, "not to leave."

Officer Cripps stated that the defendant left the area and went to Savannah, Tennessee without permission. She testified that the defendant later called her from Savannah, Tennessee on Monday, April 17, 2006. She further testified that she instructed the defendant to appear at her office in Sumner County on Thursday, April 20th. The defendant reported to Cripps' office as instructed for an appointment to review the official rules of his probation and to complete his paperwork. On that date, the defendant acknowledged and signed the official rules of probation and submitted to a drug test. The defendant tested positive for cocaine, and an affidavit regarding the defendant's positive test results was completed by Officer Cripps. Based upon the results of the defendant's drug test, and his statements about not having a place to live, Officer Cripps testified that she and her supervisor made the decision to issue a probation revocation warrant on the defendant at that time.

At the probation revocation hearing, the defendant testified that due to the absolute "no-contact" order issued by the court regarding his wife, he was unable to return home. The defendant provided his father-in-law's address to Officer Cripps. The defendant stated that he told Officer Cripps that he may be able to stay a night or two at most with his father-in-law and that is why he provided his father-in-law's address. With regard to the positive drug test results, the defendant testified that he had taken two Tylenol pills with Codeine for pain, and that he had disclosed this information to the individual performing the drug test. The defendant also stated that between April 13th and April 20th, he had smoked cigarettes provided to him by other individuals. The defendant testified that the only conclusion he could reach as to why he had a positive drug test was that he may have come into contact with individuals who had used drugs during his stay in Savannah, Tennessee. When questioned as to why his drug test was positive for cocaine but negative for any other opiates or for codeine, the defendant testified that he had no idea as to how that could have occurred.

Following the hearing, the trial court found that while there may have been some misunderstanding about whether or not the defendant was prohibited from leaving Sumner County or the state, there was no misunderstanding regarding the results of the failed drug test. Due to perceived dishonesty about the failed drug test results, the trial court held that the defendant was in violation of the terms of his probation and sentenced him to one year in confinement and subsequent probation.

ANALYSIS

On appeal, the defendant challenges the trial court's revocation of his probation. The defendant argues as the sole issue in his appeal that the trial court failed to exercise conscientious and intelligent judgment in finding that the defendant violated the terms and conditions of his probation.

We begin our review by noting that the decision to revoke probation lies in the sound discretion of the trial court. *State v. Leach*, 914 S.W.2d 104, 106 (Tenn. Crim. App. 1995). The trial court may revoke probation upon finding by a preponderance of the evidence that the defendant has violated the conditions of his or her probation. *See* Tenn. Code Ann. §§ 40-35-310, 311(e); *State v. Harkins*, 811 S.W.2d 79, 82 (Tenn. 1991). The judgment of the trial court to revoke probation will be upheld on appeal unless there has been an abuse of discretion. *Harkins*, 811 S.W.2d at 82. If the trial court has exercised "conscientious judgment in making the decision rather than acting arbitrarily," then there is no abuse of discretion. *Leach*, 914 S.W.2d at 107. Discretion is abused only if the record contains no substantial evidence to support the trial court's conclusion that a violation has occurred. *Harkins*, 811 S.W.2d at 82; *State v. Gregory*, 946 S.W.2d 829, 832 (Tenn. Crim. App. 1997).

Upon review, the record reflects that the basis of the trial court's decision to revoke the defendant's probation rested upon the defendant's failed drug test and perceived dishonesty as to the cause of those failed test results. Because the court need only exercise "conscientious judgment" in making its decision by a preponderance of the evidence, we perceive no abuse of discretion by the trial court in revoking the defendant's probation and ordering him to serve one year in confinement followed by supervised probation.

CONCLUSION

Based on the aforementioned reasoning and authorities, we affirm the judgment of the trial court.

J.C. McLIN, JUDGE